804.

SUPREME COURT OF THE UNITED STATES.

No. 129.

MARIE NICOLLE LES BOIS, PLAINTIFF IN ERROR,

vs.

SAMUEL BRAMELL.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MISSOURI.

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MISSOURI DISTRICT, *ss:*

MARIE NICOLLE LES BOIS
vs.
SAMUEL BRAMELL.

Be it remembered, that heretofore, to wit, on the sixteenth day of September, in the year of our Lord one thousand eight hundred and forty, Marie Nicolle Les Bois, by Mr. Geyer, her attorney, filed in the office of the clerk of the circuit court of the United States for the district of Missouri, her declaration in an action of ejectment against Samuel Bramell, in the words and figures following, to wit:

Declaration.

In the circuit court of the United States for the Missouri district, October term, 1840.

Marie Nicolle Les Bois, a citizen of the State of Louisiana, by Geyer, her attorney, complains of Samuel Bramell, a citizen of the State of Missouri, of a plea of trespass and ejectment: For that, whereas the said plaintiff heretofore, to wit, on the first day of January, in the year of our Lord eighteen hundred and forty, at the district of Missouri, was, and thence hitherto hath been, and still is, entitled to the possession of a certain tract of land, situate, lying, and being, in the county of St. Louis, State of Missouri, district aforesaid, containing two hundred and forty-four arpens fifty perches, more or less; bounded north northeast by lands originally granted to James Mackay, to the east southeast by lands originally granted to Antoine Soulard, on the south southwest by lands granted to Cambas and Ortiz, and on the west northwest by lands claimed by the inhabitants of St. Louis as common; and the said plaintiff being so entitled to the possession thereof, the said defendant afterwards, to wit, on the day and year aforesaid, at the district aforesaid, with force and arms, entered into the said tract of land and premises, with the appurtenances, (to the possession whereof the said plaintiff was, and is, so entitled as aforesaid,) and then and there, and thence hitherto, did, and still doth, unlawfully withhold from the plaintiff the possession thereof; and the use, occupancy, and enjoyment thereof; whereby the plaintiff, for and during all that time lost, and was deprived of, the use and benefit of the said land and premises, with the appurtenances, and the issues and profits thereof, being of great value, to wit, of the value of one thousand dollars, to wit, at the county aforesaid; and other wrongs to the plaintiff then and there did, against the peace, &c., and to the damage of the plaintiff of two thousand dollars; wherefore she brings suit, &c.

Whereupon, on the day of the filing of said declaration, a writ of summons issued out of the office of the clerk of said circuit court, in tenor and form following, to wit:

Writ.

MISSOURI DISTRICT, *sct*:

The President of the United States, to the marshal of the Missouri district, greeting:

You are hereby commanded to summon Samuel Bramell, that he be and appear before the circuit court of the United States for the district of Missouri, at the next term thereof, to be held at the city of St. Louis, within and for the district aforesaid, on the first Monday of October next, then and there to answer unto Marie Nicolle Les Bois, a citizen of the State of Louisiana, of a plea of trespass and ejectment, to the damage of said plaintiff of two thousand dollars.

Hereof fail not, and have you then there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States, this 16th day of September, A. D. 1840. Issued at office [L. S.] in the city of St. Louis, under the seal of said court, the day and year last aforesaid.

JO. GAMBLE, *Clk.*

And the marshal, to whom the same was directed, duly returned the said writ, with his return thereupon endorsed as follows, to wit:

Marshal's return.

Executed the within writ on Samuel Bramell, the said defendant, by reading to him the said writ and the within declaration, at the county of St. Louis, at the Missouri district, and his there acknowledging service thereof on the 19th day of September, in the year 1840.

JAMES H. RELFE, *Marshal.*
By ROBERT BOWLING,
Deputy marshal.

And afterwards, to wit, at the October term of said circuit court, in the year one thousand eight hundred and forty, the said defendant, by Mr. Primm, his attorney, appeared and filed his plea to the action aforesaid, in the words following, to wit:

Plea.

And the said defendant, by his attorney, comes and defends the force and injury, when, &c., and says that he is not guilty of the said wrongs and grievances above laid to his charge, in manner and form as the said plaintiff hath above thereof in her said declaration alleged against him; and of this he, the said defendant, puts himself upon the country, &c.

And afterwards, to wit, at the April term of said circuit court, in the year of our Lord one thousand eight hundred and forty-one, in the record of proceedings is the following entry:

Trial.—Verdict.

Wednesday, 15 April, 1843.

MARIE NICOLLE LES BOIS
vs.
SAMUEL BRAMELL.

Now, at this day, come again the parties aforesaid, by their respective

attorneys, and thereupon also come a jury, to wit: Henry Brown, William H. Pococke, John L. St. John, Evariste H. Pratte, Frederick M. Stephens, Simeon Stephens, Peter Overdire, John Crawford, Charles R. Hall, Archibald E. Orme, John Atkinson, Ramsay C. Jones, twelve good and lawful [men,] who being duly elected, tried, and sworn, well and truly to try the issue within joined between the parties aforesaid, upon their oath aforesaid, do say, that the said defendant is not guilty of the trespass and ejectment in the declaration mentioned, in manner and form as the said plaintiff hath, in declaring against him, alleged.

Judgment.

Therefore, it is considered by the court, that the said Marie Nicolle Les Bois take nothing by her said writ, and that the said Samuel Bramell go thereof without day. And it is further considered, that the said defendant recover against the said plaintiff his costs and charges by him about his defence in this behalf expended; and that he have thereof execution.

And before the jurors aforesaid withdrew from the bar of the court, the plaintiff, by her attorney aforesaid, filed in court her bill of exceptions, in the words and figures following, to wit:

Bill of exceptions.

Be it remembered, that on the trial of this cause the plaintiff, to maintain the issue on her part, read in evidence the petition of the plaintiff to the lieutenant governor of Upper Louisiana for a concession of lands, the concession and order of survey, the survey, certificate, and return, and the proceedings of the several boards of commissioners on said claim; which documents are in the words and figures following, to wit:

Marie Nicolle Les Bois claims arpens of land to the south of the town of Saint Louis, by virtue of a Spanish grant of the 11th of May, 1803, as follows:

Plaintiff's petition for grant of land.

A Don Chs. Dehault Delassus, l'nt. col., agregé au reg'r. fix de la Louisiane, et l'nt. g'eur de la partie haute de la même province.

Marie Nicol Les Bois, a l'honneur de vous representer qu'ayant perdu pere et mere des sa plus tendre enfanse, par suite d'un malheur tres conu, et qui seul sufit pour rendre sa position interessante aux yœux de toute homme sensible, a eu pour soutien depuis cet instant, un oncle et une tante respectable qui ont pris soin de son enfanse, considerant que le temp qui secoule la prise chaque jours de quelques uns de ses protecteurs que ses autres freres et sœurs sont tous etablis charges de famille et sans fortune; elle se trouve donc comme une etre isolé qui ne peut atendre de secours de qui que ce soit, et qui sans fortune se trouve dans une position triste sous plusieurs raports, et qui lui paroit digne de meriter l'atention du bon cœur que tout le monde vous conoît remplée de cette idée et convaincu de celle de la générosité du gouvernement qui n'a cessé d'accorder des grasses à l'infortune et d'être particuliairement le protecteur

des orphelins, elle espére qu'il vous plaira lui accorder la concession d'un espasse de terre située au sud de cette ville, et faisant partie des terres vacantes du domaine de S. M., lequel pourra contenir deux cents treze arps. de superficie, plus au moins, laquelle terre sera bornée comme il suit au N. S. et O. par les terres vacantes du domaine, et à l'E. par une concession de même largeur apartenante à Mr. Ant'e Soulard. Apris l'exposé de mes infortunes et de ma pretantion, telle est la grasse que j'ose atandre de la générosité d'un gouvernement généroux et bien faisant, et d'un chef aussi digne que vous de secondre ses intentions bien faisantes.

St. Louis, 10e de May, 1803.

MARIE NICOLLE LES BOIS.

Concession.

Sn. Luis de Illinois, à 11 de Mayo, de 1803.

Visto el expuesto que antece, le concedo à la S'ra D'na Maria Nicol Les Bois para ella y sus herederosl a tierra que solicita, si non perjudica à nadie, y el ag'or de esta Alta Louisiana, D'n Ant'o Soulard, pondra la supplicante en posesion de la cantidad de tierra que pide en el sitio indicado, lo q'l evacuado formara plano, entregando à la parte este y certificacione para que le sirva à obtener la concession y titulo en forma del S'or Intend'te G'l, à quien corresponde privativamente por r'l order el reparter y conceder toda clase de tierras realengas.

CARLOS DEHAULT DELASSUS.

[For plat of survey, see original.]

Nota—Los terminos puestos a todos los angulos, y indicados en el plano figurativo; todos los arboles las lineas van senalados con una muesca sup'r y dos canaladuras inferiores, y los de d'ra é izquierda muescados solamente. Assentado lib'o B, de los exp'rs de apeos, p'a d'ho d'to, F. 17, No. 20.

Certificate of survey.

Don Antonio Soulard, agrimensor particular de la Alta Louisiana.

Certifico que medi lindée y amojonée a favor de D'a *Marie Nicol Les Bois*, una tierra de de dos cientos quarenta y quatro arp's y cinquenta perchas planas, medidas con la percha de la cuidad de Paris, de diez y och pies de rey de largo lineales de la misma cuidad, segun medida agraria en esta provincia, cuya tierra se halla situada como à distancia de viente y unio arp's en el S. O. de esta villa de S'n Luis y linda por N. N. E. con la tierra de D'n Santiago McKay al E. S. E. con tierra de mi propriedad al S. S. O. en partida con tierras de D'n J'ph Brazeau, y tier-

ras valdias del dominio r'l, y al O. N. O. con tierras vacantes cuyos apeos y medidas hize sin tocar a la lo que puede darde si la variacion de la aguja que es de 7 gs. y 30 ms. E. como consta del plano figurativo que antecede en el que pusi anotadas las dimenciones y rumbos de los limites y demas confines, &c. Cuyo apen practique en virtud del memorial y decreto del S'or J'e de Gob'or y Subd'd de R'l Hacienda D'n Carlos Dehault Delassus en f'ha de onze de Mayo de mil ochocientos tres, y para que conste doye el presente, con el plano figurativo que precede sacado por mio diligencias practicadas. En f'ha de viente y siete de Mayo, del corriente año, en St. Luis, el veinte de Agosto, de mil ocho cientos y tres.

ANTONIO SOULARD, Ag'r p'ar.

Proceedings of commissioners.

Friday, October 7, 1808.

Board met. Present: The honorable Clement B. Penrose and Frederick Bates.

Marie Nicolle Les Bois, claiming 244½ arpens of land, situated in the commons of St. Louis, produces to the board a concession from Don Charles Dehault Delassus, lieutenant governor for the same, dated May 11, 1803; a plat and certificate of survey, dated 27th May, 1803, and certified 20th August same year.

Laid over for decision; board adjourned.

CLEMENT B. PENROSE,
FREDERICK BATES.

Wednesday, August 21, 1811.

Board met. Present: Clement B. Penrose and Frederick Bates, commissioners.

Marie Nicolle Les Bois, claiming 244½ arpens of land, see book No. 3, pa. 282. It is the opinion of this board that this claim ought not to be confirmed.

Board adjourned until to-morrow eight o'clock, A. M.

CLEMENT B. PENROSE,
FREDERICK BATES.

Ded. No. 39.

Thursday, November 39, 1832.

Board met pursuant to adjournment. Present: Lewis F. Linn [and] F. R. Conway, commissioners.

Marie Nicolle Les Bois, by her legal representatives, claiming 244½ arpens of land, see book C, pages 73, 74, and 75, No. 3, p. 282, No. 5, p. 328, produces a paper, purporting to be an original concession for 213 arpens of land, more or less, from Charles Dehault Delassus, dated 11 May, 1803; also a paper, purporting to be a plat and certificate of survey for 244 arpens and 50 perches, taken 27 May and certified 20th August, 1803, by Anthonio Soulard.

M. P. Leduc, duly sworn, saith, that the signature to said concession is in the proper handwriting of the said Charles D. Delassus, and the

signature to said certificate of survey is in the proper handwriting of said Soulard.

The board adjourned until to-morrow at 10 o'clock, A. M.

L. F. LINN,
F. R. CONWAY.

No. 39.

Tuesday, November 5, 1833.

The board met pursuant to adjournment. Present: L. F. Linn, A. G. Harrison, F. R. Conway, commissioners.

Marie Nicolle Les Bois, claiming 244½ arpens of land, see pages 64 and 65 of this book, (No. 6.) The board are unanimously of opinion that this claim ought to be confirmed to the said Marie Nicolle Les Bois, or her legal representatives, according to the concession.

The board adjourned until to-morrow at 9 o'clock, A. M.

L. F. LINN,
F. R. CONWAY,
A. G. HARRISON.

Translation of petition.

To Don Charles Dehault Delassus, lieutenant colonel attached to the stationary regiment of Louisiana, and lieutenant governor of the upper part of the same province.

Marie Nicolle Les Bois has the honor of representing to you, that having lost her father and mother since her most tender years, in consequence of a well known disaster, which alone would be sufficient to render her situation interesting to all men of feelings, and having had for support since that moment an uncle and aunt, both respectable, who have taken care of her infancy, considering that time in his flight deprives her every day of some one of her protectors; that her brothers and sisters are all married, and loaded with family, and without fortune; that she remains as an isolated being, who cannot expect any assistance of any one whomsoever; and who, without fortune, finds herself under several points of view in a calamitous situation, which appears to her to be worthy to attract the attention of the good heart every body knows you possess. Full of this idea, and convinced of the generosity of the government, which has never ceased to grant favors to the unfortunate, and to be particularly the protector of orphans, she hopes you will be pleased to grant to her the concession of a tract of land situated to the south of this town, and being vacant lands of his majesty's domain, and which may contain two hundred and thirteen arpens in superficie, more or less; which land shall be bounded as follows: to the north, south, and west, by the vacant lands of the domain, and to the east by a concession of some width belonging to Mr. Antonio Soulard.

Such is the statement of my misfortune and pretensions, and I presume to hope this favor of the generosity of a benevolent and generous government, and of a chief as worthy as you are to fulfil its benevolent intentions.

MARIE NICOLLE LES BOIS.

St. Louis, May 10, 1803.

Of concession.

ST. LOUIS OF ILLINOIS, *May* 11, 1803.

Having seen the foregoing statement, I do grant to Marie Nicolle Les Bois, for her and her heirs, the land which she solicits, in case it is not prejudicial to any person; and the surveyor of this Upper Louisiana, Don Antonio Soulard, shall put the petitioner in possession of the quantity of land she solicits in the place designated; which, when executed, he shall draw out a plat of survey, delivering the same to the party, with his certificate, in order to serve to her to obtain the concession and title in form from the intendant general, to whom alone corresponds, by royal order, the distributing and granting of all classes of lands of the royal domain.

CARLOS DEHAULT DELASSUS.

Of survey.—Upper Louisiana, district of Sn. Luis de Illinois.

(For map, see original.)

Note.—The bounds set to all corners are shown on the plat.

All the line trees were marked with one blaze above 2 notches. The trees on both sides of the lines were blazed only.

Registered in book B, of the surveys for said district, folio 17, No. 20.

Of certificate of survey.

Don Antonio Soulard, surveyor general of Upper Louisiana—I do certify that I have measured, run the lines, and bounded, in favor of Marie Nicolle Les Bois, a piece of land of two hundred and forty-four arpens and fifty perches, in superficie, measured with the perch of the city of Paris of eighteen French feet in length, lineal measure of the said city, according to the agrarian measure of this province; which land is situated at about the distance of twenty-five arpens to the southwest of this town of Saint Louis, and is bounded to the north northwest by lands of Don Santiago Mackay; to the east southeast by lands belonging to me; to the south southwest in part by lands of Don Jh. Brazeau, and by vacant lands of the royal domain; and by the west southwest by vacant lands: which measurement and survey I took without regarding the variation of the needle, which is 70° 30′ east, as is evident by the foregoing figurative plat, on which are noted the dimensions, directions of the lines and limits, and other boundaries, &c.

Said survey was executed by virtue of the memorial and decree of the lieutenant governor and sub-delegate of the royal fisc, Don Carlos Dehault Delassus, dated 11th May, 1803.

In testimony whereof, I do give the present, with the preceding figurative plat, executed by my exertions on the 27 of May of the current year, in St. Louis, August 20, 1803.

ANTOINE SOULARD,
Surveyor general.

Truly translated, St. Louis, December 15, 1832.

JULIUS DE MUN.

Certificate of recorder.

OFFICE OF THE RECORDER OF LAND TITLES,
Saint Louis, Missouri, 6th of April, 1841.

I, F. R. Conway, United States recorder of land titles in the State of Missouri, do hereby certify, that the above and foregoing pages contain a full, true, and complete transcript from the books and documents on file in this office, in relation to the claim of Marie Nicolle Les Bois, of 244 arpens and fifty perches of land therein described. The petition, concession, and plat, and certificate of survey of the same, are copied from the original documents on file in the French and Spanish languages. The proceedings of the boards of commissioners are transcribed from the books of their minutes, as therein referred to. The translation of the petition, concession, and certificate of survey into the English language, are copied from the printed documents on file in this office, being the translations made by the translator to the late board of commissioners duly appointed according to law, and printed by order of Congress. That the said tract, 244 arpens and 50 perches of land, was recommended for confirmation by the recorder of land titles in the State of Missouri, and the two commissioners associated with him, under the provisions of the act of Congress of the 9th of July, 1838, entitled "An act for the final adjustment of private land claims in Missouri," and the act supplemental thereto, of the 2d of March, 1833, in their report to the commissioners of the general land office of the 27th of November, 1833, and numbered in said report thirty-nine, (39,) which report was confirmed by act of Congress, approved the 4th of July, 1836, remaining on file in my office, as far as said report relates to the claim of the said Marie Nicolle Les Bois for the 244 arpens and 50 perches of land aforesaid.

F. R. CONWAY,
U. S. recorder of land titles in the State of Missouri.

Rejection of claim by commissioners.

The plaintiff then read in evidence the following document:

Mary Nicolle Lebois, claiming two hundred and forty-four and a half arpents of land, situate in the commons of St. Louis, produces to the board a concession from Don Carlos Dehault Delassus, lieutenant governor for the same, dated 11th May, 1803, a plat and certificate of survey, dated 27th May, 1803, and certified 20th August, same year.

August 21, 1811.—Present, Penrose and Bates, commissioners.

It is the opinion of the board, that this claim ought not to be confirmed.

SURVEYOR'S OFFICE, *St. Louis, 14th April*, 1841.

The above extract from the "report" (dated January the 20th, 1812) "of" (John B. C. Lucas, Clement B. Penrose, and Frederic Bates) "the commissioners for ascertaining and adjusting the titles and claims to lands in the Territory of Louisiana, of all the claims filed with the recorder, which had not been confirmed or granted," is correctly copied from page 597, of "*American State Papers*," *vol. II, Public Lands*, placed on file in this office, by the Commissioner of the General Land Office.

WILLIAM MILBURN,
Surveyor of the public lands in the States of Illinois and Missouri.

It was admitted that the last mentioned document is truly extracted from the report of the commissioners for ascertaining and adjusting land titles in the Territory of Louisiana, to the Commissioner of the General Land Office, bearing date January 20th, 1812.

The plaintiff also read in evidence a plat and certificate of survey, made under the authority of the United States, as follows, to wit:

Plat and certificate of survey, by authority of the U. States.

Survey No. 3,184.

Plat and description of the survey of a tract of two hundred and four arpens and fifty perches, equal to two hundred and eight acres of land, situated in township forty-five, north of the base line, range seven, east of the fifth principal meridian, in the State of Missouri, executed on the twenty-fifth day of September, eighteen hundred and thirty-eight, by Charles de Ward, deputy surveyor, under instructions from the surveyor of the public lands in the States of Illinois and Missouri, dated the sixth day of September, eighteen hundred and thirty-eight.

This being the tract of land granted, on the eleventh day of May, eighteen hundred and three, to Marie Nicolle Les Bois, by Charles Dehault Delassus, then lieutenant governor, for the government of Spain, of the province of Upper Louisiana, surveyed on the twenty-seventh day of May, eighteen hundred and three, by Antoine Soulard, Spanish surveyor of the same province, and confined to the said Marie Nicolle Les Bois, or her legal representatives, by the act of Congress of the United States, approved the *four* of July, eighteen hundred and thirty-six, entitled "An act confirming claims to land in the State of Missouri, and for other purposes," according to the decision, numbered thirty-nine, of the report of the board of commissioners, appointed by the act of Congress, approved the ninth of July, eighteen hundred and thirty-two, entitled "An act for the final adjustment of private land claims in Missouri;" and the act of Congress, approved the second of March, eighteen hundred and thirty-three, supplemental thereto.

[For plat see original.]

Description.

Begin at the southwestern corner of survey numbered three thousand one hundred and twenty-four, in the name of Antoine Soulard; and also a corner of this survey on the northern boundary line of survey numbered three thousand and seventy-eight, in the name of Joseph Brazeau, a stone, (in William Russel's field,) sixteen inches long, twelve inches wide, and five inches thick, marked with a cross, from which the northeast corner of a frame house, two stories high, bears south sixty-four degrees and fifteen minutes west, two hundred and ninety-five links distant—this stone is on the west edge of a road; thence north thirty-five degrees and forty-eight minutes east, with the western boundary line of Soulard's survey; at three chains and ninety-two links, leave William Russel's field; at six chains and forty-two links, a road bearing east and southwest; at seven chains and forty-six links, intersect the line between the surveys made for Jean Ortiz and Jean Cambas, of forty arpens each, seventy-three chains and thirty-four links southeastward from the northwestern corner of said survey of Ortis; at said intersection is a sassafras stake, set sixteen links eastward from a stone, set at the time of the survey of the claims of said Ortis and Cambas, and which stone was supposed to be set at the intersection of their dividing line with the western line of Soulard's survey; at ten chains and forty-nine links, intersect the northern boundary line of Jean Cambas' survey, seventy-three chains and seventeen links southeastward from his northwestern corner; at said intersection a sassafras stake standing twelve links eastward of a stone set in the survey of Cambas' claim, and which stone was supposed to be set at the intersection of his said northern boundary, with the western boundary line of Soulard's survey; at fourteen chains and nineteen links, the middle of a road bearing northeast; at twenty-one chains and forty-two links, Soulard's enclosure to the left; at forty-one chains and forty-two links, equal to one hundred and forty-two French poles, the northwest corner of Soulard's survey, and the northeast corner of this survey, on the south boundary line of survey numbered three thousand one hundred and twenty-three, in the name of James Mackay—a stone, twenty-four inches long, nine inches wide, and four inches thick, marked with a cross—said stone is in the shape of a wedge, its lesser end is out of the ground, and it stands one hundred and seventy links southward from a stone marked NW, in a sink hole. Thence north seventy-degrees and fifty minutes west, with the southern line of survey numbered three thousand one hundred and twenty-three; at two chains and ninety-four links, in a public grave yard not enclosed; at thirty-two chains and ninety-four links, the east side of the road, leading from Manchester to Saint Louis, bears northeast and southwest; at thirty-five chains and ninety-four links, an old road bears northeast and southwest; at fifty-two chains and fifty links, (equal to one hundred and eighty French poles,) the northwestern corner of this survey on the southern boundary line of survey numbered three thousand one hundred and twenty-three, a stone eighteen inches long, fourteen inches wide, and three inches thick, marked with a cross—

said stone being in this shape [†], with the lesser end out of the ground. Thence south nineteen degrees and ten minutes west, with the western line of this survey; at twenty-eight chains and eighty-five links, intersect the northern boundary line of Cambas' survey of forty arpens—at said intersection, a stone, eighteen inches long, twelve inches wide, and three inches thick, marked with a cross; at thirty-one chains and eighty-six links, intersect the line dividing the surveys of Cambas and Ortis, and there set a stone, (in the shape of a wedge,) eighteen inches long, thirteen inches wide, and two inches thick, marked with a cross; at forty-one chains, intersect the line between the survey of Madame Chouteau and the survey of Gervais—at said intersection a stake; at forty-four chains and sixty-three links, (equal to one hundred and fifty-three French poles) the southwest corner of this survey—set two stones in the ground, one is eight inches long, six inches wide, and four inches thick; the other six inches long, three inches wide, and two inches thick—both marked with a cross and flattened. These two stones are accompanied with four other stones of smaller size, each marked with a cross. Thence south seventy degrees and fifty minutes east, with the southern boundary line of this survey; at twenty-three chains and nineteen links, a corner of survey numbered three thousand and seventy-eight, in the name of Joseph Brazeau, a stone on the west side of a road, twelve inches long, eight inches wide, and four inches thick, marked with a cross, and shaped thus [†], (continue same course with a line of Brazeau's survey;) at thirty-five chains and seventy links, a spring in a sinkhole, about one hundred and fifty links north of this line; at thirty-six chains and seventy links, a corner of this survey, and also a corner to Brazeau's survey—a stone, sixteen inches long, fourteen inches wide, and five inches thick, marked with a cross.

Thence north nineteen degrees and ten minutes east, with a line of Brazeau's survey; at three chains and fifty-nine links, intersect the line dividing the survey of Madam Chouteau with the survey of Gervais—at said intersection a stone, sixteen inches long, six inches broad, and six inches thick, from which the middle of the door of a frame house bears south sixty-two degrees and fifteen minutes east, one hundred and forty links distant; at five chains and fourteen links, a corner of this survey, which is also the most northern corner of Brazeau's survey, a stone, eighteen inches long, fourteen inches thick, and eight inches wide, marked with a cross. This stone is ninety-three links southward of an old stone (projecting about eighteen inches above the ground) in a sink hole, about twenty-five links southeast of a spring.

Thence south seventy degrees and fifty minutes east, with a line of Brazeau's survey; at one chain and eighty links, enter William Russel's field; at three chains and seventy-eight links, the beginning corner.

SURVEYOR'S OFFICE, SAINT LOUIS,
2d of April, 1841.

The foregoing plat and description of survey No. 3,184, are correctly

copied from the approved plat and description of said survey No. 3,184, recorded on pages 197 and 198, of book C, in this office.

WILLIAM MILLBURN,
Surveyor of the public lands in the States of Illinois and Missouri.

Defendant's Evidence.

The defendant, on his part, read in evidence a transcript of the records in the office of the recorder of land titles, in the words and figures following, to wit:

Claim of the inhabitants of St. Louis.

Claim.—The inhabitants of St. Louis claim 4,293 arpens of land, situate joining the town of St. Louis, known by the name of the Common of St. Louis, granted by a decree of the Lt. Govr. François Cruzat, the 22d September, 1802.

Regulations of the Common.

Nous soussignés, sindics nommés par l'assemblée des habitans qui a été faite en la chambre du gouvernement le 22 du mois de Septembre de cette anneé 1782, par Monsieur Don Franço. Cruzat, lieutenant colonel gradué d'infanterie, commandant en chef et lieutenant gouverneur de la partie occidentalle et districts des Illinois, pour etablir des regles fixes et inalterables pour la construction et entretien des rues, ponts et canaux de ce village, munis de l'autorité du public qui nous a élus a ces fins, nous avons determiné en la ditte chambre du gouvernement, et en presence du susdit M. D. F. Cruzat, aujourd' hui 29 du même mois ce qui suit et à quoi on se conformera regullierement à l'avenir.

1. Il sera fait le premier jour de chaque année en la chambre du gouvernement et en presence de Mons'r le lieut. gouver'r une assembleé de tous les habitans de ce poste, dans laquelle on nommera, a la pluralité des voix, deux sindics pour veiller unanimement a l'entretien des rues, ponts, et canaux de ce village, laquels seront obligés de faire observer et remplir exactement les articles suivants.

2. Le premier de voir des sindics aussitot leur election doit être d'examiner par eux mêmes le local interieur du village et de faire reparer sans délai, les rues, canaux et ponts par les personnes qui y sont obligées, et que nous indiquons plus bas, et si quelqu'un refusoit de s'y conformer ils auront recours à la justice pour les obliger a remplir un object si indispensable pour la commodité publique.

3. Tous les habitants qui font face à une rue par laquelle passera un ruisseau seront obligés a donner au cours à l'eau jusqu' au Mississippi, a faire les canaux et ponts necessaires, à les entretenir et a metre en tout tems la rue practicable pour la facilité des voitures et charrois publics.

4. Hors les cas expliqués dans les articles c'y dessus les rues en general seront racomodées et entretenues en bon état par les proprietaires des terriens qui y feront face, bien entendu que les vis-a-vis y co-opereront par egalle portion, si le cas l'exige.

5. Enfin le pont de la petite riviere, ainsi que tous les chemins qui sont hors du village, seront faits et entretenus par le public.

Fait et passé en la sale du gouvernement, et en presence de Mr. le lieutenant gouverneur, qui a signé avec nous le dit jour et an, que ut supra.

PERRAULT,
BRAZEAU,
CERRE,
RENE KIERSEREAU,
AUG. CHOUTEAU,
CHAUVIN,
Marque ord. ⋈ du Sr. JOSEPH TRILLON,
Marque ord. ⋈ du Sr. JOSEPH MAINVILLE,
FRANC'E CRUZAT.

Nous soussigneés sindics nommés par l'assemblée des habitants qui a été faite en la chambre du gouvernement le 22 du mois de Sept'bre de cette année 1782, par Monsie'r Don Franç's Cruzat, lieutenant colonel gradué d'infanterié, commandant en chef et lieutenant gouverneur de la partie occidentalle et districts des Illinois, pour etablir des regles fixes et inalterables pour la construction et entretien des clotures de la commune de ce village munis de l'autorité du public, qui nous a élus a ces fins, nous avons déterminé en la ditte chambre du gouvernement et en presence du susdit M. D. Franç's Cruzat, aujourd 'huy 29 du méme mois a qui suit et a quoi on se conformera regullierement à l'avenir.

1o. Le premiere jour de chaque année on nommera publiquement dans la chambre du gouvernement en presence de Mr. le lieutenant gouverneur un syndic, et immediatement apres huit arbitres qui feront la premiere visite des clotures de la commune.

2o. Les clotures de la ditte commune seront faites et parfaites tous les ans pour le 15 d'Avril au plus tard, et seront reçues le premier dimanche apres ce quantieme par les huit arbitres nommés.

3o. Les susdits arbitres ne pourront recevoir les clotures sans quelles soient constructes de maniere que les animaux ne puissent soiter de la commune pour faire du degat dans les seminees des habitants.

4o. Il sera du devoir des dits huit arbitres de rendre compte au sindic de la visite qu'ils auront fait des clotures, lequel tout aussitot en nommera huit autres pour verifier l'exactitude ou la negligence des premiers, et s'il se trouvoit des clotures qui ne fussent pas dans l'etat requis pour être reçues, et que les premiers arbitres n'en eussent pas fait leur raport au dit sindic, ils seront condamnés à payer chacun une amende de dix livres.

5o. Lorsqu'il parviendra à la connoissance du sindic que quelque cloture n'est pas dans l'etat décrit dans le troisieme article de ce reglement, il sera de son devoir d'en avertir le proprietaire, pour que sans delai il y apporte le remede convenable, et si ce dernier par caprice ou autrement négligeoit ce just devoir, le sindic la fera racommoder à ses depens.

6o. Si le dernier qui aura fait la visite des clotures n'avertissoit pas le sindic de l'etat dans lequel il les aura trouvées et que dans l'intervalle de sa visite à celle qui doit se faire apres il se trouvoit que les animaux fussent soites et qu'ils eussent fait quelque domage, il sera constraint à le

payer; et s'il arrivoit que le sindic ayant été prevenu du mauvais état des clotures eut negligé d'en avertir les proprietaires, alors il sera responsable du degat, et constraint à le payer lui même; egalement, dans le cois où les proprietaires des clotures auroient été avertis par le sindic d'aller les racommoder et qui ils ne l'auroient pas fait dans l'instant, ils subiront la même peine.

7. S'il arrivait dans le tems que les animaux seroient sortis, et qu'ils auroient fait du degat, que plusieurs clotures seroient defectueuses: pour remedier aux suites facheuses qui resultent ordinairement de pareils faits, il est statue que les domages seront payés par égale portion, ils subiront la même peine.

7o. S'il arrivoit dans le tems que les animaux seroient sortis, et qu'ils auroient fait du degat, que plusieurs clotures seroient defectueuses; pour remedier aux suites facheuses qui resultant ordinairement de pareils faits, il est statué que les domages seront payés par egale portion par ceux dont les clotures seront mauvaises, cependant s'il survenoit que dans les pace d'une visite à l'autre, les clotures ayant été trouveés en bon état par le sindic, ou par les personnes preposees à cet effet, que les animaux eussent pavé par quel que brêche, faite par des malfaicteurs inconnus, ou par quelu'autre evénement inattention, le domage qui s'en suivra restera pour celui à qui il aura été fait.

8o. Si les animaux qui seront mes en liberté venoient a être pris dans les champs sans que les propriétaires aissent cooperé à leur sortie, ils ne seront tenus n'y a en payer la prise ni le domage supposé qu'il y en eut.

9o. Lorsqu'il sera prouvé que le gardien de barriere y aura laisse passer des animaux de quelqu'espece qu'ils puissent être par sa negligence ou autrement, il sera contraint à payer le toit qui aura été fait.

10o. Aussitot que les clotures seront reçues, il ne sera permis à qui que ce puisse être de passer par dessus sous peine de payer pour la premiere fois une amende de dix livres, et pour la seconde de ving et quatre, et d'être punis de vingt quatre heures de prison.

11. Les malfaicteurs surpris a faire brêche dans les clotures soit pour passa eux mêmes, ou pour faire passer des animaux, n'importe quel qu'en soit le motif, seront condamnes à payer en outre du domage qu'ils auront causé; 50ie d'amende, et subiront 15 jours de prisson.

12o. Il est ordonné à tous ceux qui trouveront quelqu'un à commettre le délit especifié dans l'article precedent d'en donner le plus prompt avis à Mons. le lieut. gouverneur, et de conduire lui même le criminel en prisson, s'il lui est possible de l'arrêter. Mais si quelque personne, par une indulgence mal entendue, ou par un interest particulier, ne remplissoit pas exactement ce devoir, et qu'il fut prouvé qu'il auroit dit à d'autres personnes d'avoir surpris quelqu'un dans ce cas, il sera reputé complice du crime, et condamné à payer la même amende et domage, et à subir la punction c'y dessus portee.

13o. Les proprietaires de chaque cloture seront obligez d'y metre une etampe avec leur nom en entier, sous peine de quinze livres d'amende.

14o. Celui qui prendra un cheval attaché dans la prairie pour s'en servir sans l'aveu du maitre, sera condamné à payer 25th d'amende, et

puni de 24 heures de prison, et s'il survenoit quelqu' accident facheux au cheval, il le payera suivant l'appretiation qui en sera faite.

15o. Si des chevaux ou animaux atachez dans la prairie cassant leur corde, venirent à être pris dans les champs, celui qui les arretéra se fera payer pour chaque tête 5th, et le proprietaire de la terre sur laquelle ils seront pris, exigera le payement du domage qui sera estimé par des arbitres.

16o. Lorsqu'il sera prouvé que quelqu'un aura pris la corde d'un animal ataché dans la prairie, il la payera dix livres sans prejudice de 5th pour la prise et des domages qu'il aura occasioné, suivant l'estimation arbitralle qui en sera faite.

17o. Il ne sera permis à qui que ce puisse être d'atacher des chevaux ou autres animaux sur la terre d' autrui, sans son propre consentement, s'il en étoit autrement, le maitre de la terre se saisera des animaux, et exigera de celui à qui ils appartiendront 5th par tête, et sera en droit de reclamer le dommage supposé qu'ils en ayant fait.

18o. Quand on trouvera des esclaves à enfraindre quelqu'un des articles cy-dessus, leurs maitres payeront les amendes prises et dommages prescrits, et les susdits esclaves seront punis par la fouet selon l'exigence des cas.

19o. Toutes les amendes seront deposées entre les mains du syndic determiné par Mr. le lieut. gouverneur, des deux, qui seront nommés annuellement pour la police et entretien du village, et elles seront reversibles aux traveaux publics de la communauté.

Fait et passé en la sale du gouvernement, en presence du susdit lieutenant gouverneur, qui a signé avec nous, le même jour et an, que ut supra.

PERRAULT,
CERRE,
RENE KIERSEREAU,
BRAZEAU,
CHAUVIN,
AUG'TE CHOUTEAU,
Marque ⋊ ord're de Mr. J'P TAILLON,
Marque ⋊ ordinaire de Mr. J'P MAINVILLE,
FRANC'E CRUZAT.

[For map see original.]

Certificate.

I do certify, that the above plot represents four thousand two hundred and ninety-three arpens of land, situated joining the town of St. Louis

and surveyed by me at the request of the inhabitants of the said St. Louis, who claims the same as their right in common, and at *whoes* request I have included in the said common seven different pretensions of different individuals, as appears on the above plot, besides those which are unknown to me, and not surveyed. Given under my hand at St. Louis, the 22d day of Feb., 1806.

JAMES MACKAY.

Received for record, St. Louis, 27 Feb., 1806.

ANTOINE SOULARD,
Surveyor G'al T'y Louis'a.

RECORDER'S OFFICE, ST. LOUIS, MISSOURI,
10 *April*, 1841.

I certify the foregoing pages, from 1 to 5 inclusive, to be truely copied from the original documents on file and of record in book B, pages 486, 487, and 488, of record in this office.

F. R. CONWAY,
U. S. Recorder of land titles in the State of Missouri.

Proceedings of Commissioners.

May 10, 1806.

The board met agreeably to adjournment.

Present: honorable Clement B. Penrose, esq.

The inhabitants of the town of St. Louis, claiming 4,293 arpens of land as a commons, produces a certificate of survey of the same, dated 22d of February, 1806; a set of regulations of the inhabitants having for object the keeping in order, or repairing of the enclosure of the said commons, and imposing penalties on such as should neglect or refuse to repair the same. Said regulations signed by the then Lt. Governor Cruzat, and dated September 22d, 1782.

Deposition of Aug. Chouteau.

Auguste Chouteau, being duly sworn, says, that the inhabitants never had a concession for said commons; that he has always known it as such, although of a much smaller extent at first; that it was first fenced in in the year 1764, at the expenses of the inhabitants, who always kept it in repair; and further, that every person, inhabitant of the village, was in the habit of pasturing his cattle in the same, and of cutting wood; and further, that he has known the said commons as surveyed and fenced for upwards of fifteen years hence.

Gregoire Sarpé.

Gregoire Sarpee, being duly sworn, says that he arrived in the country about 19 or 20 years ago; that he has always known said commons as such; that the same had then acquired its present size; that when he arrived he found the same fenced in, and that every inhabitant was obliged, under certain penalties, to attend to and make such repairs as the said inclosure or fences required; and further, that Sylvester Labbadie having, in the year 1792, obtained a concession for lands forming part of

said commons, and having in consequence thereof begun his improvements of the same, the inhabitants remonstrated against it to the Lt. Governor, who prevented him from cultivating the same until such time as the intendant should have decreed otherwise.

Lecompte.

William H. Lecompte, being also sworn, says, that he has been an inhabitant of the county for upwards 44 years—has known the commons from his first arrival in the city; that said commons has increased in proportion to the population of the village; that he has known it of the size it now is for upwards of ten years; that the old commons is included in the present one; and that the regulations passed respecting the same were always considered as laws, and enforced as such; and further, that other regulations were had respecting the same, and also put in force.

Rejection by Commissioners.

The board reject this claim for want of actual inhabitation and cultivation, and a duly registered warrant of survey, (carried to page 311 for remarks of the board.) Adjourned to 3 o'clock, P. M.

Approved the above proceedings.—3 o'clock, P. M., May 10, 1806.

See book No. 1, pages 288, 289, 290, and 291.

June 14, 1806.—The board met agreeably to adjournment.

Present: the honorable John B. C. Lucas, Clement B. Penrose, and James L. Donaldson, esqrs.

In the case of the commons of St. Louis, pages 289 and 290, the board remark that this claim originated under the French government; that grants of commons were usual under the French and Spanish governments, and in conformity with their respective laws. They deem it to be equitable under Spanish law. On motion, adjourned to Monday, the 16th inst., 9 o'clock, A. M. See book No. 1, pages 310, 311, and 312.

Tuesday, January 2d, 1812.—Board met.

Present: John B. C. Lucas, Clement B. Penrose, and Frederick Bates, commissioners.

Inhabitants of the town of St. Louis, claiming 4,293 arpens of land as a common. See book No. 1, pages 289, and 311. It is the opinion of a majority of the board that this claim ought not to be granted. Clement B. Penrose, commissioner, voting for a confirmation thereof under the usages and customs of the Spanish government

Board adjourned till Monday next, nine o'clock, A. M.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE,
FREDERICK BATES.

See book No. 5, pages 551, 552, and 553.

RECORDER'S OFFICE, ST. LOUIS, MISSOURI,
10 *April*, 1841.

I certify the foregoing pages, from 7 to 8 inclusive, to be truly tran-

scribed from the books of the minutes of the proceedings of the board of commissioners for ascertaining and adjusting the titles and claims to lands as therein referred to, on file of record in this office.

F. R. CONWAY,
U. S. Recorder of land titles in the State of Missouri.

Deposition of Joseph Papin.

Joseph Papin, being produced by Baptiste Duchonquette, was duly sworn, and says, that he was born in the town of Saint Louis, and is forty-five years of age, and has always lived in said town of St. Louis; that to the knowledge of this deponent there was no enclosure or common field lots below the town of Saint Louis. This deponent further says, that he is the grandson of Veuve Chouteau, the mother of August Chouteau, and recollects perfectly well, that when a small boy, that the then commandant drove the hands of his grandmother from off the land, which his grandmother claimed below the town of St. Louis, called the Little Prairie; and further, this deponent says, he never heard of the claims of Ortes, and Cambas, and Gervais, that is said was situated in this same prairie.

JOSEPH PAPIN.

Sworn to before me, August 29, 1825.

THEODORE HUNT,
Recorder L. titles.

Frs. Carlton.

Francis Carlton, being duly sworn, says, he has resided in the town of Saint Louis for fifty-eight years, and to his knowledge there never was an enclosure in the Little Prairie south of the town of Saint Louis. About thirty-five years ago, to the knowledge of this deponent, Madame Chouteau sent a man Dubois to cultivate the land she claimed in the said Little Prairie, and to the knowledge of this deponent the then citizens of St. Louis complained to Perez, the then commandant, who forbid that any enclosures or cultivations should be made there, and they immediately desisted; and this deponent says, that he never has heard of any attempt to cultivate or enclose any of the said Little Prairie south of the town of Saint Louis. This deponent further says, that he was well acquainted with Ortes, and Cambas, and Gervais, and to his knowledge they, nor neither of them, ever did enclose, or cultivate, or claim any land in this said Little Prairie, south of the town of Saint Louis.

his
FRANCOIS ⋈ CARLTON.
mark.

Sworn to before me, August 29, 1825.

THEODORE HUNT,
Recorder L. T.

B'te Dominé.

Baptiste Dominée being duly sworn, says, he has resided in the town

of Saint Louis for forty-five years, being occasionally absent for three or four months at a time, and to his knowledge, during these forty-five years, there never was any land enclosed or cultivated in the Little Prairie south of the town of Saint Louis.

his
BAPTISTE ⋈ DOMINEE.
mark.

Sworn to before me, August 29, 1825.

THEODORE HUNT,
Recorder L. T.

Regis Vasseur.

Regis Vasseur, being duly sworn, says, he has resided in the town of Saint Louis for forty-eight years, and during the whole of this time, the Little Prairie, south of the town of Saint Louis, belonged to the inhabitants of said town as a commons, and during this time never was cultivated or enclosed.

his
REGIS ⋈ VASSEUR.
mark.

Sworn to before me, August 29, 1825.

THEODORE HUNT,
Recorder L. T.

Cozens.

Horatio Cozens, being duly sworn, that he has translated and explained truly the above depositions to Joseph Papin, François Carlton, Baptiste Dominee, and Regis Vasseur, respectively, before they swore to the same.

HORATIO COZENS.

Sworn to before me, August 29, 1825.

THEODORE HUNT,
Recorder L. titles.

See Hunt's minutes, No. 2, pages 171, 172, 173.

The mayor, aldermen, and citizens of the city of St. Louis produce Henry Duchonquette and Joseph Charleville, for the purpose of having their depositions recorded, as relates to the Saint Louis commons.

Duchonquette.

Henry Duchonquette, being duly sworn, says, he is sixty-six years of age, and has lived in Saint Louis upwards of forty years, and during this time, until the change of government took place, he always knew there was a common belonging to the inhabitants of the town of Saint Louis, and that there was a fence around it, and that he has often assisted to make and keep in repair the said fence; as near as he can describe it, it was bounded as follows: the fence began near to where Mr. Reynard now lives above the town, and ran back of the town, and from thence

to the Carondelet field fence, to the river des Peres; and the ground thus taken was considered the commons.

HENRI DUCHONQUET.

Sworn to before me, Nov. 22, 1825.

THEODORE HUNT,
Recorder L. titles.

Charleville.

Joseph Charleville, being duly sworn, says, he has resided thirty-five years in the town of St. Louis, and is fifty-five years old, and has had the deposition of Henry Duchonquette read to him, and of his knowledge he knows it to be true.

J'PH. CHARLEVILLE.

Sworn to before me, Nov. 22d, 1825.

THEODORE HUNT,
Recorder L. titles.

Hunt's minutes, No. 3, page 79.

J. B. Lorain.

John Bap. Lorain, sen'r, being duly sworn, as relates to the commons of St. Louis, says, he is about eighty-four years of age, and it is about fifty years since he came first to reside in St. Louis, it being when Mr. Piernas was lieutenant governor of this country; and he, this deponent says, when he first came to reside in St. Louis, the land fenced in between the Mississippi river and the common field fence (excepting the town and such small grants as *where* made within the said limits) was a commons, for the use of the inhabitants of the town of Saint Louis; certain he is that it was always used as such by the inhabitants from the time he first came to reside in St. Louis, until he removed to Florisent, about twenty-five years ago; and this deponent further says, that when he first came to St. Louis, the commons extended to the river des Peres, but after that, when Carondelot was laid out, there was an agreement made between the inhabitants of St. Louis and the inhabitants of Carondalet that the common field fence of St. Louis should join the common field fence of Carondalet, and that all east of the St. Louis field fence should belong to the inhabitants of St. Louis, and west to Carondalet.

his
JOHN BAPTISTE ⋈ LORAIN, pere.
mark.

Sworn to before me, Nov. 23d, 1825.

THEODORE HUNT,
Recorder L. titles.

B'te Dominé.

Baptiste Dominé, being duly sworn, says, he is seventy-five years of age, and will have resided forty-six years in St. Louis next February,

and that he has had the deposition of John Baptiste Lorain, pere, read to him, and that he knows it to be true.

his
BAPTISTE ⋈ DOMINE.
mark.

Sworn to before me, Nov. 23d, 1825.

THEODORE HUNT,
Recorder L. T.

Gremaux dit Charpentier.

Alexander Gremaux, dit Charpentier, being duly sworn, says, he is sixty-six years of age, and has resided in St. Louis forty-four years, and has read to him the deposition of Jno. B. Lorain, sen'r, and knows it to be true; and he further knows that the commons was surveyed by Antoine Soulard in the time of the Spanish government.

his
ALEXANDRE ⋈ GREMAUX, dit CHARPENTIER.
mark.

Sworn to before me, Nov. 23, 1825.

THEODORE HUNT,
Recorder L. T.

Wherry.

Mackay Wherry, being duly sworn, says, he has truely translated and read to John Bapt. Lorain, sen'r, the aforegoing deposition of his, before he signed the same, and that he said it was true; and that he likewise translated and read to Baptiste Dominé, and Alexander Gremaux, dit Charpentier, the deposition of John Baptiste Lorain, sen'r, and that they said it was to their knowledge true. And this deponent further says, he has translated and read the depositions of Baptiste Dominé and Alexander Grimaux to each of them before they signed the same.

M. WHERRY.

Sworn to before me, Nov. 23d, 1825.

THEODORE HUNT,
Recorder L. Titles.

Be. Riviere.

Baptiste Riviere, dit Baccané, being duly sworn in relation to the Saint Louis commons, says, the bounds of the commons began where the Ox mill now is, and thence west, up the hill; thence, southwardly, in the rear of where Joseph Papin now lives; thence, after it crossed Mill creek, it went to the prairie Denoyer; thence, southwardly, about an arpen or two below the place called the Pain Sucre, which place is a little in the rear of where the shot tower now is, and eastwardly by the Mississippi passing by the spring of Beneto Vasquez; and this deponent says, that for upwards of sixty years, the land contained within these limits was the Saint Louis commons, and he believes was granted by St. Ange, and he does not live in Saint Louis, nor has any lot there.

his
BAPTISTE ⋈ RIVIERE.
mark.

M. P. Leduc, being duly sworn, says, he has truly translated and read the above to Bap. River.

M. P. LEDUC.

T. HUNT, *Recorder land titles.*

See Hunt's minutes, No. 3, page 84.

P. Chouteau.

Pierre Chouteau, sen'r, being duly sworn, as relates to the Saint Louis commons, says, that he came to this town about six months after the foundation of the same, and from that time he of knowledge knows that the commons was recognized and allowed by the different lieutenant governors, as well French as Spanish; and he further says, that as the town enlarged, there *was* meetings held of the inhabitants at the lieut. governor's, for the purpose of enlarging the commons; this was done more than once, and it was determined on at said meetings; the fence was *was* removed so as to enlarge the same for the use of the inhabitants of said town of St. Louis; and he further says, all land laying between the common field fence (excepting the ancient concessions) and the river, was considered a commons for the use of the inhabitants of Saint Louis. He, this deponent, further says, that Madame Laquaisse had a lot at the upper part of the town adjoining the half moon battery, but before that time he never heard of such a claim, and he of his knowledge knows it never was possessed or occupied by any person before or at the time the change of government took place from France to the United States.

P'RE CHOUTEAU.

Sworn to before me, Nov. 24, 1825.

THEODORE HUNT,
Recorder L. T.

RECORDER'S OFFICE,
St. Louis, Missouri, 10 *April,* 1841.

I certify the foregoing from page 10 to 14, both inclusive, to be truly copied from book No. 2, pages 171, 172, and 173, and book No. 3, pages 79, 82, 83, 84, and 85, of the minutes of the proceedings of the recorder of land titles in the State of Missouri, under the act of Congress approved the 26th of May, 1824, entitled "An act supplementary to an act, passed on the 13th day of June, 1812," entitled "An act making further provisions for settling the claims to land in the Territory of Missouri"—on file of record in this office.

F. R. CONWAY,
U. S. recorder of land titles in the State of Missouri.

RECORDER'S OFFICE,
St. Louis, Missouri, 10*th April,* 1841.

I certify that the foregoing, from pages 1 to 14 inclusive, contains a full, true, and complete transcript of all that appears on file, or of record,

in this office, in relation to the claim of the inhabitants of the town, now city, of St. Louis, to a commons adjoining the said town or city.

F. R. CONWAY,
U. S. recorder of land titles in the State of Missouri.

The defendant also read in evidence to the jury the following certificate of survey:

Plat and survey of common, by authority of the United States.

Plat and survey of the lands claimed by the inhabitants of the city of St. Louis, as commons, surveyed under contract with, and instructions from, the surveyor of public lands in the States of Illinois and Missouri, dated "Surveyor's Office, St. Louis, November , 1832."

[For plat see original.]

Begin at a stone, which is a corner of this survey, and also a corner of Auguste Chouteau's survey, No. 363, set of old by Spanish authority; thence along said Chouteau's line, which is the northern boundary of this survey, N. 75° 10' W.; at the distance of 17 chains 70 links from the beginning, is a stone 10 links on the left; at 32 chains 67 *chains* a stone in the line; at 43 chains 70 links intersect a branch 6 links wide; at 44 chains 92 links, left said branch bearing northwardly, having cut out a short bend of it; at 46 chains 70 links intersect Chouteau's mill-pond, bearing northeastward; at 50 chains 50 links left said pond; at 62 chains 78 links is a stone; at 92 chains 42 links a stone; at 101 chains 36 links intersect the creek of pond 20 links wide, and bears southeastward; at 106 chains 81 links intersect a spring branch 4 links wide, bearing northward; at 107 chains 11 links a stone; at 151 chains 67 links a stone; at 166 chains 22 links a stone; at 175 chains set a post in said line for a corner of this survey, which is 5 chains 90 links eastward of the southwest corner of Chouteau's said survey, from which a cherry, 4 inches diameter, bears N. 76° W., 50 links distant, (and is 25 links southward of a large spring,) and a pin oak 4 inches in diameter, bears N. 66° 30' W., 324 links distant; thence along the western boundary of this survey S. 0° 42' E.; at 28 chains 57 links intersect a line of James Y. O'Carrel's survey, No. , where set a post 95 chains 18 links eastward of his corner stone in Gratiot's line; from said post a red oak 3 inches in diameter, bears N. 32 E., 94 links distant, and a red oak 4 inches in diameter, bears N. 63¾ W., 90 links distant; thence measured along the said western boundary of this survey to a corner of Charles Sanquenette's survey, No. , which is also a corner of this survey, the whole length of this line being 162 chains 71 links; said corner

is a post, from which a red oak, 15 inches in diameter, bears S. 59° E., 97 links distant, and the northwest corner of the chimney, to a dwelling house, bears S. 46½° E., 156 links distant; thence along one of said Sanguinette's lines, which is a line of this survey, S. 82° 45' E., 9 chains and 5 links, where set a post as corner to this survey and Sanguinette's survey, the old corner not being found, from which a pin oak, 9 inches in diameter, bears N. 11° 30' E., 201 (lks.) distant; thence along an old line of Sanguinette's survey and of this survey, S. 7° 15 W., (crossing a spring branch running eastward, about midway this line,) 9 chains, to the old corner of this survey, a post and stone, from which a pin oak, 8 inches in diameter, bears N. 13° W., 136 links distant, and a pin oak, 10 inches in diameter, bears S. 88° W., 13 links distant; thence 82° 45' W., along an old line of said Sanguinette's survey, which is a line of this survey, 9 chains and 5 links, set a corner post, from which a pin oak, 12 inches in diameter, bears S. 67° E., 67 links distant, and a sassafras, 6 inches in diameter, bears S. 12° E., 65 links distant; thence along another of said Sanguinette's lines, being also a line of this survey, S. 7° 15' W., 23 chains 14 links, to an old stone corner of said Sanguinette's and of this survey; thence along the east end of other field lots S. 7° W., 37 chains 70 links, a stone set of old as the southeast corner of a survey of Charles Sanguinette's claim under J. B. Tesson, being a corner of the survey; thence along a new line, as called for in this survey, 33 chains 25 links, set post for a corner from which a black oak, 5 inches in diameter, bears N. 12° W., 15 links distant, and a hickory, 4 inches in diameter, bears N. 68° W., 2 links distant; thence S. 8° W., along another new line, as called for in this survey, 55 chains 35 links, set a post for a corner, from which a red oak, 6 inches in diameter, bears N. 30½ E., 219 links distant, and a red oak, 9 inches in diameter, bears N. 18¼ E., 232 links distant; thence east along a new line, which is the south boundary of this survey, 49 chains 27 links, set a post on the bank of the river, the S. E. corner of this survey, from which an elm, 10 inches in diameter, bears N. 31° E., 15 links distant, and a sycamore, 6 inches in diameter, bears S. 18¾ E., 55 links distant; from this line, measured at right angles northward, the S. E. corner of a stone house near the shot tower, on the right bluff, is distant 6 chains 13 links, and the centre of the shot tower is distant 5 chains 22 links; from said S. E. corner meander up the river, between high and low water mark, N. 30° 20' E., 36 chains; thence N. 49° E., 12 chains 50 links; thence N. 35° E., 18 chains, set a post on the bank of the river, a corner of this survey, from which a plumb tree, 3 inches in diameter, bears N. 20° E., 75 links distant, and a walnut, three inches in diameter, bears N. 17° W., 45 links distant; thence along a new line N. 30° 45' E., to a point called for in a line of Auguste Chouteau's said survey, as a corner of this survey; at 42 chains 67 links this line, which is the eastern boundary of this survey, intersects the township line, where set a good hammered stone for corner, to fractional sections 3 and 34, in townships 44 and 45 north, and range 7 east, 17 chains 52 links west of the corner, to said fractional section, set in the southern line of Suzan Dubreuil's survey

No. 374; at 56 chains 94 links intersect the south boundary line of Susan Dubreuil's said survey, where set a post 19 chains 30 links westward of her corner, on the bank of the river, from which post a white oak, 3 inches in diameter, bears N. 5° E., 14 links distant, and a white oak, 3 inches in diameter, bears S. 75 W., 34 links distant; at 69 chains 17 links intersect the western boundary of said Susan's survey, where set a post 46 links southward of her northwest corner stone, from which post a white oak, 4 inches in diameter, bears S. 10° W., 80 links distant; at 164 chains 40 links intersect the southern boundary line of Madame Chouteau's survey, No. 1827, where set a post 12 chains 21 links westward of her S. E. corner, from which a mulberry, 3 inches in diameter, bears S. 13° 45' W., 44½ links distant, and a plumb, 3 inches in diameter, bears S. 31° W., 44 links distant; at 176 chains 12 links intersect the northern line of said survey, and set a post there 11 chains 41 links westward of her N. E. corner, from which a pecanne, 3 inches in diameter, bears S. 54° E., 33 links distant, and a locust, 4 inches in diameter, bears N. 44° E., 107 links distant; at 177 chains 20 links intersect the south line of A. Soulard's survey, No. , where set a post 10 chains 63 links westward of his S. E. corner, from which post a locust, 4 inches in diameter, bears S. 50° E., 26 links distant, and a locust, 5 inches in diameter, bears N. 18° W., 108 links distant; at 218 chains 45 links intersect the line between James Mackay's and A. Soulard's survey, and set post there 14 chains and 40 links westward of his N. E. corner of said survey, and 15 chains 70 links westward of the N. W. corner of his survey, in the name of Gabriel Cerre, from which a black oak, 4 inches in diameter, bears N. 7° 31' E., 28 links distant, and a black oak, 3 inches in diameter, bears S. 72° W., 6½ links; at 233 chains 34 links distant, which is the whole length of this line, intersect Auguste Chouteau's line, and there set a post, for a corner of this survey, 8 chains 65 links westward of his corner, near the convent, from which post a pin oak, 4 inches in diameter, bears N. 5° W., 11 links distant, and a pin oak, 4 inches in diameter, bears S. 36° 30' W., 34 links distant; thence along Chouteau's said line, being a line of this survey, N. 75 W., 32 chains 9 links, to an old stone corner of said Chouteau's survey, which is a corner of this survey; thence N. 14 E., 12 chains 3 links, along a line of Chouteau's said survey, being a line of this survey, to the beginning; which said survey of the commons claimed as aforesaid, contains 3,837 03 acres, equal to 4,510 43 arpens.

May 13th, 1833.

JOS. C. BROWN, *D. S.*

SURVEYOR'S OFFICE,
Saint Louis, 7th of April, 1841.

The foregoing plat and description of the survey of the commons of Saint Louis are correctly copied from pages 74, 75, and 76 of record book C, in this office. The plat of the survey, No. 3,184, subsequently made of the claim of Marie Nicolle Les Bois, within the survey of said commons, is this day laid down on the said foregoing plat of the com-

mon, according to the survey of the said claim of Marie Nicolle Les Bois.

WILLIAM MILBURN,
Surveyor of the public lands in the States of Illinois and Missouri.

Agreement by parties.

It was agreed by the parties, that at the time of the commencement of this suit, the defendant was in the actual possession and occupation of twenty acres of land, parcel of the tract of land in the declaration mentioned, as tenant of the city of St. Louis, claiming the same as common belonging to the inhabitants of St. Louis, and further, that the matter in dispute in this action exceeds the value of two thousand dollars, exclusive of costs.

It was also admitted by the parties, that from a short time after the settlement of the village of St. Louis, there was a fence commencing above the town of St. Louis, running weswardly a little west of the village, until it came to the hill near the court house, and then ran in a direction south of west, until it reached the line of the Barriere des Noyer fields, and then running southwardly along the front of those fields, until it reached the Carondelet fields, and from that point extended to the river. The land on the eastern side of that fence was used by the inhabitants of the town for the pasturage of cattle, and for the supply of wood, and was always called the common of the town, while the land on the western side was used for cultivation. The land in question lies on the eastern side of this fence, and within what was called the common. The fence above mentioned was destroyed in the year 1797, at which time the cultivation of the common fields west of said fence was discontinued.

Plaintiff's instructions refused.

No other evidence being given by either party, the plaintiff moved the court to instruct the jury, that the survey offered by the inhabitants of St. Louis in support of their claim, upon which survey was laid down, at the request of the claimants, the concession and survey of Marie Nicolle Les Bois, excludes and protects from the confirmatory operation of the acts of Congress of 13th June, 1812, and act of Congress of 27th June, 1831, the title of said Marie Nicolle Les Bois, to the tract granted to her.

Which instruction the court refused to give; to which decision the plaintiff by her counsel excepted.

Instructions given.

The court then instructed the jury as follows:

1. That the inhabitants of the town of St. Louis were confirmed in their claim to commons by the acts of Congress of 1812 and 1831.

2. That the notice of claim of said inhabitants, as filed with the recorder of land titles, and exhibited before the board of commissioners, read here to the jury, is evidence of the extent of the said claim to said commons.

3. If the claim of the plaintiff is included within the boundary of the lands confirmed to the town of St. Louis by the acts of 1812 and 1831, then the jury must find for the defendant; because those acts passed the title to the land in controversy to the inhabitants of said town.

To which opinion of the court, in giving the said instructions, the plaintiff, by her counsel, excepted. And the plaintiff prays the court to sign and seal this bill of exceptions, which is done accordingly, this 14th day of April, 1841.

J. CATRON, [SEAL.]
R. W. WELLS. [SEAL.]

MISSOURI DISTRICT, *ss:*

I, Joseph Gamble, clerk of the circuit court of the United States, for the district of Missouri, certify the foregoing to be a full, true, and complete transcript of the record and proceedings of said court in a certain matter of controversy therein determined, between Marie Nicolle Les Bois, plaintiff, and Samuel Bramell, defendant, as the same is of record and on file in my office.

In testimony whereof, I hereto subscribe my name, and affix the [SEAL.] seal of said court, at office in the city of St. Louis, the 3d day of November, in the year 1841.

JOS. GAMBLE.

MISSOURI DISTRICT, *sct:*

The President of the United States to the honorable the judges of the [SEAL.] circuit court of the United States, for the 8th circuit and district of Missouri:

Because, in the record and proceedings, and also in the rendition of the judgment of a plea in the said circuit court, between Marie Nicolle Les Bois, demandant, and Samuel *Barnell*, defendant, a manifest error hath happened, to the great damage of the said demandant, as by her complaint appears; we being willing that error, if any, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, you distinctly and openly send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, so that you have the same, together with this writ, before the chief justice and associate justices of said Supreme Court, on the second Monday of January next, at the city of Washington, the present seat of the National Government, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness, the honorable Roger B. Taney, chief justice of the said Supreme Court, the fourteenth day of April, in the year of our Lord one thousand eight hundred and forty-one. Issued at office in the city of St. Louis, under the seal of the circuit court of the United States, for the district of Missouri, the day and year last aforesaid.

JO. GAMBLE, *Clerk.*

MISSOURI DISTRICT, *sct:*

In obedience to the command of the foregoing writ, I herewith transmit a transcript of the record and proceedings of the circuit court of the United States for the district of Missouri, in the plea aforesaid, to the Supreme Court of the United States.

JO. GAMBLE,
Clerk U. S. C. C., Missouri district.

MISSOURI DISTRICT, *sct:*

The President of the United States, to Samuel Bramell, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of January next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the district of Missouri, wherein Marie Nicolle Les Bois is plaintiff in error, and you are defendant in error, to shew cause, if any there be, why the judgment rendered against the said Marie Nicolle Les Bois, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John Catron, one of *of* the justices of the Supreme Court of the United States, the third day of May, in the year of our Lord one thousand eight hundred and forty-four.

J. CATRON.

I, Wilson Primm, attorney, of record in the above cause, state, that in appearing and pleading to this cause, I acted as city attorney of the city of St. Louis, and in fact represented the interests of said city, of which the defendant, Samuel Bramell, in respect of the land sued for, was a terre-tenant; and as far as I may lawfully do so, without prejudice to the interests of said city, I acknowledge service of the above citation. I further state, that I am no longer city attorney of said city, and that Trusten Polk, esquire, is now city counsellor of said city, and whose duty it is to perform the same services which, in my capacity of city attorney, I was bound to perform.

St. Louis, May 7th, 1844.

WILSON PRIMM.

I, Trusten Polk, city counseller of the city of St. Louis, and whose duty it is to perform the same services which belonged to the office of city attorney at the time that office was holden by Wilson Primm, esq., as far as I may legally and properly do so, acknowledge service of the above citation.

St. Louis, May 7, 1844.

TRUSTEN POLK.

In the Supreme Court, December term, 1844.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

MARIE NICOLE LESBOIS
vs.
SAMUEL BRAMMEL. } In error.

And the said Marie Nicole, by her attorney, comes and says, that in the record and proceedings aforesaid, and in the judgment aforesaid, in form aforesaid, there is manifest error in this, to wit, that the judgment aforesaid, in form aforesaid, was rendered for the said defendant, and against the said plaintiff; whereas, the said judgment ought to have been for the said plaintiff, and against the said defendant. Wherefore, for the error aforesaid, and for divers other errors in the said record and proceedings appearing, the said Marie Nicole prays that the judgment aforesaid, in form aforesaid, may be set aside, reversed, annulled, and for nought held, and that she may be restored to all things which she has thereby lost.

MAGENIS,
Att'y for plaintiff in error.

Filed, , 1844.